

§ 26.26

(c) *Secretarial action.* Upon granting any petition for review, the Secretary or designee, may require further briefs. Secretarial review shall be limited to the factual record produced before the hearing officer. The Secretary, or designee, shall issue a written determination and shall serve it upon the parties and the hearing officer.

§ 26.26 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within ten days of the ruling requesting certification of the ruling for review by the Secretary. Certification may be granted if the hearing officer believes that (1) it involves an important issue of law or policy as to which there is substantial ground for difference of opinion and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within ten days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, shall review a certified ruling. The Secretary, or designee, has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, or designee, the hearing shall proceed pending the determination of any interlocutory appeal and the order or ruling of the hearing officer shall be effective pending review.

Subpart B—Hearings Pursuant to the Administrative Procedure Act

SOURCE: 61 FR 50210, Sept. 24, 1996, unless otherwise noted.

GENERAL

§ 26.27 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant

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to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*).

§ 26.28 Definitions.

The following definitions apply to subpart B of this part:

Chief Docket Clerk means the Chief Docket Clerk of the Office of Administrative Law Judges at the following address: 409 3rd Street, S.W., Suite 320, Washington, DC 20024.

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an administrative law judge.

Response means the written response to a complaint, admitting or denying the allegations in the complaint and setting forth any affirmative defense and/or any mitigating factors or extenuating circumstances. The response shall be submitted to the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.29 Powers and duties of the Administrative Law Judge (ALJ).

The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made. The ALJ is authorized to:

(a) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(b) Continue or recess the hearing in whole or in part for a reasonable period of time;

(c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(d) Administer oaths and affirmations;

(e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(f) Rule on motions and other procedural matters;